

## Office of the Secretary, Interior

## § 4.220

(1) The notice must be posted at least 20 days before the hearing date in five or more conspicuous places in the vicinity of the designated place of hearing.

(2) The administrative law judge or Indian probate judge may cause postings in such other places and reservations as he or she deems appropriate.

(3) A certificate showing the date and place of posting must be signed by the person or official who performs the act.

(b) The administrative law judge or Indian probate judge must serve or cause to be served a copy of the notice on each interested party known to the administrative law judge or Indian probate judge and on each attesting witness if a will is offered:

(1) By personal service in sufficient time in advance of the date of the hearing to enable the person served to attend the hearing; or

(2) By mail, addressed to the person at his or her last known address, in sufficient time in advance of the date of the hearing to enable the addressee served to attend the hearing. The administrative law judge or Indian probate judge must cause a certificate, as to the date and manner of the mailing, to be made on the record copy of the notice.

(c) All interested parties, known and unknown, including creditors, will be bound by the decision based on the hearing if they lived near any place of posting during the posting period, whether or not they had actual notice of the hearing. With respect to interested parties not living near the place of posting, a rebuttable presumption of actual notice will arise upon the mailing of the notice at a reasonable time before the hearing, unless the notice is returned by the postal service to the office of the administrative law judge or Indian probate judge unclaimed by the addressee.

(d) When a record reveals that a tribe has a statutory option to purchase interests of a decedent:

(1) The administrative law judge or Indian probate judge must notify the tribe of the pendency of a proceeding; and

(2) The certificate of mailing of notice of probate hearing or of a final decision in probate to the tribe at its

record address will be conclusive evidence that the tribe had notice of the decedent's death and of the probate proceedings.

### § 4.217 Contents of notice.

(a) In the notice of a formal hearing, the administrative law judge or Indian probate judge must:

(1) Specify that, at the stated time and place, the administrative law judge or Indian probate judge will take testimony to determine the heirs of the decedent (naming him or her) and, if a will is offered for probate, testimony as to the validity of the will (describing it by date);

(2) Name all known probable heirs of the decedent, and, if a will is offered for probate, the beneficiaries under the will and the attesting witnesses to the will;

(3) Cite this subpart as the authority and jurisdiction for holding the hearing;

(4) Inform all persons having an interest in the estate of the decedent, including persons having claims against the estate, to be present at the hearing or their rights may be lost by default; and

(5) State that the hearing may be continued to another time and place.

(b) A continuance may be announced either at the original hearing by the administrative law judge or Indian probate judge or by an appropriate notice posted at the announced place of hearing on or before the announced hearing date and hour.

### DEPOSITIONS, DISCOVERY, AND PREHEARING CONFERENCE

SOURCE: 70 FR 11817, Mar. 9, 2005, unless otherwise noted.

### § 4.220 Production of documents for inspection and copying.

(a) An interested party may make a written demand to produce documents for inspection and copying or photographing. This demand:

(1) May be made at any stage of the proceeding before the conclusion of the formal hearing;

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(2) May be made upon any other party to the proceeding or upon a custodian of records on Indians or their trust property;

(3) Must be made in writing, and a copy must be filed with the administrative law judge or Indian probate judge; and

(4) May demand any documents, papers, records, letters, photographs, or other tangible things that are:

(i) Relevant to the issues;

(ii) In the other party's or custodian's possession, custody, or control; and

(iii) Not privileged.

(b) Upon failure of prompt compliance, the administrative law judge or Indian probate judge may issue an appropriate order upon a petition filed by the requesting party.

(c) On his or her own motion, the administrative law judge or Indian probate judge may issue an order to any interested party or custodian of records for the production of material or information that is relevant to the issues and not privileged. The administrative law judge or Indian probate judge may do this after notifying all parties at any time before closing the record.

(d) Custodians of official records will furnish and reproduce documents, or permit their reproduction, in accordance with the rules governing the custody and control of such records.

#### § 4.221 Depositions.

(a) *Stipulation.* Depositions in connection with a formal hearing may be taken upon stipulation of the parties. Failing an agreement therefor, depositions may be ordered under paragraphs (b) and (c) of this section.

(b) *Application for taking deposition.* When an interested party files a written application, the administrative law judge or Indian probate judge may at any time thereafter order the taking of the sworn testimony of any person by deposition upon oral examination for the purpose of discovery or for use as evidence at a formal hearing. The application must be in writing and must set forth:

(1) The name and address of the proposed deponent;

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(2) The name and address of the person, qualified under paragraph (d) of this section to take depositions, before whom the proposed examination is to be made;

(3) The proposed time and place of the examination, which must be at least 20 days after the date of the filing of the application; and

(4) The reasons why the deposition should be taken.

(c) *Order for taking deposition.* If after examination of the application, the administrative law judge or Indian probate judge determines that the deposition should be taken, he or she will order its taking. The order must be served upon all interested parties and must state:

(1) The name of the deponent;

(2) The time and place of the examination, which must be at least 15 days after the date of the order except as stipulated otherwise; and

(3) The name and address of the officer before whom the examination is to be made. The officer and the time and place need not be the same as those requested in the application.

(d) *Qualifications of officer.* The deponent must appear before the administrative law judge or Indian probate judge or before an officer authorized to administer oaths by the law of the United States or by the law of the place of the examination.

(e) *Procedure on examination.* The deponent must be examined under oath or affirmation and must be subject to cross-examination. The deponent's testimony must be recorded by the officer or someone in the officer's presence. An applicant who requests the taking of a person's deposition must make his or her own arrangements for payment of any costs incurred.

(f) *Submission to witness; changes; signing.* (1) When the testimony is fully transcribed, the deposition must be submitted to the deponent for examination and must be read to or by him or her, unless examination and reading are waived by the deponent or by all other interested parties.

(2) Any changes in form or substance that the deponent desires to make must be entered upon the deposition by